



Grenfell Tower and Building Safety Reform: the story so far

More than two years after the worst residential fire in the UK since the second world war, you could be forgiven for thinking that very little change has actually been achieved. But what lies on the horizon in terms of regulatory reform for building regulations and fire safety?

On the night of 14 June 2017, a fire broke out at Grenfell Tower, a 24-storey block of residential flats in London. The fire is understood to have started when a kitchen appliance malfunctioned, and its rapid spread has been associated with a type of cladding made of Aluminium Composite Material. It took 2½ days to put out the fire. As a result of the disaster, 72 people were killed and a similar number injured.

After the fire

A public inquiry was commenced following the fire. The facts of what happened on the night of 14 June 2017 have been explored in Phase 1 of the inquiry, and the chairman's report is set to be published on 30 October 2019. It will, no doubt, be important not to allow the fact that may be "Brexit Eve" to swamp the importance of what may be learnt. In any event, Phase 2 of the public inquiry, which starts in 2020, will focus on the circumstances and causes of the fire.

An independent review of Building Regulations and Fire Safety was carried out by Dame Judith Hackitt, the former Chair of the Health and Safety Executive. Her report, published in May 2018, concluded that the current system was not fit for purpose. She made recommendations for a new framework, which have been taken forward as part of a government consultation (more of which below).

In the meantime, there have been some changes, albeit rather limited ones. Problems discovered with certain types of composite fire doors were tackled in the autumn of 2018, which involved products being withdrawn from the market, the introduction of new testing programmes and advice to building owners about the doors that they already have.

Also in terms of existing buildings, in the aftermath of the Grenfell Tower, 433 high rise residential and publicly-owned buildings were identified as having unsafe forms of ACM cladding. The Government has made a fund available to assist remediation work by social sector landlords, and a private sector remediation fund has also been established. By the end of April 2019, remediation work was completed in 95 buildings, had started in 110 and plans were in place to remediate in another 187 buildings. However, that seemed to leave 41 buildings

without a remediation plan at that stage.

Just before Christmas 2018, changes to the Building Regulations 2010 have meant that materials used on the outside of buildings more than 18 metres high have to conform to a minimum standard of fire rating. The outcome of Phase 2 of the public inquiry will no doubt inform further reform of relevant regulations and standards in the future, and there are proposals for stronger regulation of construction products.

Consultation on regulatory reform

More widely, following the Hackitt report, in June 2019, the Government launched a consultation about building safety reform. It focuses on residential buildings lived in by multiple households which are 18 metres (six storeys) or more high, but it leaves open the possibility of extending the new regime to other buildings in multiple occupations where people sleep (prisons, hospitals, hotels, student accommodation, etc.).

While such buildings are being built, it is proposed that duties will be imposed on people responsible for parts of the project so that the new building can be shown to comply with relevant building and safety regulations. Sensibly, there will be harmonisation in that the duty holders' functions will be aligned with the very familiar language of the Construction (Design and Management) Regulations 2015 ("CDM"). The idea is that the duty holders must show that risks have been managed at different "gateway points" (before planning is granted, before construction starts, and before anyone moves in) before they can move to the next stage.

The details of the proposals are not explored in detail here, and it is reasonably likely that some will not make the final cut! However, the aim is to create a "golden thread" of key safety information about a building during its construction and any refurbishment, which is to be held digitally so it can be used effectively further down the line.

In the case of higher risk residential buildings, the consultation then identifies that an "accountable person," who may be assisted by a building safety manager, will be given duties to make sure that fire and safety risks are minimised when people are living in them. That safety management function includes risk assessment and implementation of control measures including emergency procedures.

The consultation also suggests that this framework be phased in for existing buildings, as well as new ones. Duty holders will be required to be demonstrably competent.

It is proposed that this new regime will be regulated by a new building safety regulator, who will have a familiar set of powers (such the ability to serve enforcement notices) as well as some new ones. Attaching conditions to, or withdrawing completely, a building safety certificate will be a possibility. New criminal offences of carrying out work without gateway approval, and not applying for or complying with building safety certificates, will sit alongside the existing health and safety, fire safety and building regulations offences.

What next?

The Government's response to the consultation is expected before the end of the year. It is difficult to see that its principles will not be adopted to a great extent, given the scale of the disaster which sparked the discussion.

The general move towards greater regulation over the last few years, a prime example perhaps being the extension of clients' duties under CDM, will be something that those regularly involved in construction will be all too familiar with. However, it will be a steeper learning curve for those who are involved in the management of buildings after construction has finished, whether owners, agents or the new accountable persons.

It is worth planning ahead. For example, think about who will fulfil the key roles and how you will ensure that they are competent. Consider carefully your procurement processes and contracts: it is not easy to contract out a non-delegable duty! Finally, most importantly, perhaps, what safety critical or other information will be collected about the building during its lifetime (the golden thread), and how will it be held?

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